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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. RASHAUN EVERETT BELL, Defendant and Appellant.	A126657 (Solano County Super. Ct. No. FCR256586)

Following the denial of his motion to set aside a consolidated information on the ground that he had been the victim of an unlawful search and seizure, defendant Rashaun Everett Bell entered into a negotiated disposition of all pending charges. Pursuant to this agreement, defendant entered pleas of no contest to possessing methamphetamine while on bail, and to resisting peace officers in the performance of their duty (Health & Saf. Code, § 11377, subd. (a); Pen. Code, §§ 69, 12022.1). In exchange for these pleas, the remaining charges were dismissed, and defendant was promised he would be admitted to probation after being given a suspended sentence to state prison not to exceed five years and eight months. Pursuant to the bargain, defendant was sentenced to state prison for five years and eight months, but imposition of that sentence was suspended and defendant was admitted to probation for a period of five years. With this timely appeal, defendant contends only that his motion was erroneously denied. We conclude there was no error, and affirm.

BACKGROUND

A few words are in order at the outset.

At the preliminary examination, defendant unsuccessfully moved to suppress evidence pursuant to Penal Code section 1538.5. Thereafter he did not renew that motion—as permitted by that provision of the Penal Code (Pen. Code, § 1538.5, subd. (i))—but elected to use Penal Code section 995 to challenge the validity of the search to which he was subjected. Because defendant is limited to challenging the propriety of the denial of his motion to set aside the information pursuant to Penal Code section 995, we do not look to what was decided by the superior court, but rather to what was decided by the magistrate at the preliminary examination: "[I]n proceedings under section 995 it is the magistrate who is the finder of fact; the trial court . . . sits merely as a reviewing court; it must draw every legitimate inference in favor of the information, and cannot substitute its judgment as to the credibility or weight of the evidence for that of the magistrate. [Citation.] On review by appeal . . . , the appellate court in effect disregards the ruling of the superior court and directly reviews the determination of the magistrate holding the defendant to answer. [Citations.]" (*People v. Laiwa* (1983) 34 Cal.3d 711, 718.)

The record of the preliminary examination, viewed most favorably to the magistrate's determination, and in support of the information, supports the following recitals:

On the evening of January 10, 2009, Fairfield Police Officers Trojanowski and Flores were in uniform, patrolling on bicycles. They observed defendant emerge from a gold-colored vehicle in the parking lot of a strip mall. Defendant was wearing dark "puffy" clothing and gloves. Both of the businesses in the mall—a restaurant and an auto supply store—were closed.

Defendant inspected a pickup truck, which belonged to the auto supply store, parked in the lot. He looked inside the truck, and then ducked down by one of the pickup's tires, giving the appearance of examining it. The officers suspected that defendant might be attempting to burglarize the pickup.

However, without proceeding to implement such an intent, defendant left the mall and began walking down the street. The gold car also left. Officers Trojanowski and Flores followed defendant. Defendant entered a trailer park, and approached one of the trailers, identified as "Unit Number 6." He began pulling, "vigorously, like [he was] trying to get inside," on the gate of the enclosed porch of the trailer.

The officers came up to defendant. Officer Trojanowski asked defendant if he lived in the trailer. Defendant replied that he did not. When Trojanowski asked why he was there, defendant replied that he was visiting a friend, but he did not provide the name of his friend. Officer Trojanowski told defendant that he was suspected of prowling, and to sit down. Defendant was "argumentative" with Officer Trojanowski, who had to tell defendant repeatedly to sit down before he did so.

Officer Trojanowski told defendant that he was going to be detained, and that he would be handcuffed as part of the detention. The officer made this decision based on "the fact that I couldn't determine whether he belonged to the trailer. He didn't claim to know anybody. I had seen him acting suspiciously around the truck. And it was dark. He has baggy clothes on or thick clothing on, gloves. It was a combination of all of those factors." Officer Flores testified that Trojanowski told defendant he was being detained "since he was standing before the doorway and actually prying the door handle to a residence that . . . . Mr. Bell had admitted . . . was not his residence and he did not know who lived there."

Officer Trojanowski managed to get only one of the handcuffs on defendant. Defendant evaded having the second handcuff put on, and resisted Officer Trojanowski's efforts to do so. In the course of their struggle, Officer Trojanowski pulled one of defendant's gloves. He saw that defendant had something on his clenched hand. Officer Trojanowski repeatedly told defendant to open his hand, but defendant refused to comply, and continued his resistance. Eventually Officer Flores had to use a taser on defendant. Once defendant was fully handcuffed, the officers found a baggie of methamphetamine on the ground where defendant had been. Three more baggies were subsequently

discovered when they fell out of defendant's trousers. The owner of Unit Number 6 told the officers she did not know defendant and was not expecting him.

The magistrate denied defendant's suppression motion as follows:

"The Court notes the following facts in connection with the 1538.5: At least one of the officers has nine years experience in local law enforcement plus another I believe two years with Solano County. These two officers together observe the defendant exit a gold car in the parking lot or lots of two businesses, and both businesses are closed. The individual goes to a truck that is marked as a truck of the Auto Zone business. He looks in the windows, crouches down at the rear tire. He is doing something at the rear tire, and then he gets up and walks away. And this is at 8:00 o'clock or 8:30 at night.

"He goes to the entrance of a trailer park, into the trailer park entrance. And as Officer Trojanowski testified, as soon as the officers entered the trailer park, which I believe there was evidence it was about 15 feet away from the entrance to Unit Number 6, the defendant turned towards the door-like gate on the patio of Unit Number 6. From that activity there was an inference that the defendant was aware of the police attempting to make contact with him or that they were observing him, that he was aware of that observation and that he was attempting to quickly leave.

"He is found actively trying the door. He is shaking the door. He is not the owner. When he is asked what he is doing there, he says that he is there to visit a friend. He doesn't know the name of the friend or the owner of the place. At that point the officers have acquired reasonable suspicion to detain him to investigate any criminal activity. So they have sufficient suspicion at that point to detain and investigate further.

"The next events include his non-cooperation with the order to sit down repeated several times. There was verbal belligerence from him and resistance of [to] cuffing which further confirms the reasonable suspicion. The cases pointed out by the People indicate that once the officers have acquired reasonable suspicion they can use reasonable force to accomplish the detention. So the Court finds that through the sequence of events the officers did acquire reasonable suspicion to detain Mr. Bell . . . . And at that point the

force is not unreasonable, and they have not been involved in an unreasonable search and seizure. So the motion for the 1538.5 is denied."

DISCUSSION

Defendant does not dispute that the officers had reasonable cause to detain. He contends only that when Officer Trojanowski attempted to handcuff him, when that action was not "reasonably necessary," the detention must be regarded as "a de facto arrest that was not supported by probable cause."

Defendant acknowledges that handcuffs do not automatically transmute a detention into an arrest. (See *People v. Celis* (2004) 33 Cal.4th 667, 675-676.) "Generally, handcuffing a suspect during a detention has only been sanctioned in cases where the police officer has a reasonable basis for believing the suspect poses a present physical threat or might flee. [Citation.] The more specific the information the officer has about a suspect's identity, dangerousness, and flight risk, the more reasonable a decision to detain the suspect in handcuffs will be. [Citation.] Circumstances in which handcuffing has been determined to be reasonably necessary for the detention include when: (1) the suspect is uncooperative; (2) the officer has information the suspect is currently armed; (3) the officer has information the suspect is about to commit a violent crime; (4) the detention closely follows a violent crime by a person matching the suspect's description; (5) the suspect acts in a manner raising a reasonable possibility of danger or flight; or (6) the suspects outnumber the officers. [Citation.]" (*People v. Stiers* (2008) 168 Cal.App.4th 21, 27-28.)

In denying defendant's suppression motion at the preliminary examination, the magistrate made what clearly amounts to a finding that defendant fled from the strip mall when he became aware of being observed by the officers. Defendant's subsequent frantic efforts to get inside the locked porch of trailer No. 6 are consistent with an intent to evade detection and capture. And "fleeing at the first sight of a uniformed police officer . . . is a much stronger indicator of consciousness of guilt." (*People v. Souza* (1994) 9 Cal.4th 224, 234-235.) The circumstances of that flight—at night, when the nearby businesses were closed, and the chances for detection correspondingly reduced, combined with

defendant wearing dark clothing and gloves—could also be significant for the officers who, as the magistrate noted, had considerable experience. (See *id*. at p. 240.)

Although neither Officer Trojanowski nor Officer Flores testified to actually anticipating physical danger from defendant, the possibility was implicit in the situation of detaining a burglary suspect: As Division Four of this District has recently noted: "The burglary cases . . . point out that not only may an individual suspected of such a crime reasonably be anticipated to be armed with a weapon (such as a knife or firearm), but also may reasonably be expected to possess 'tools of the trade' such as screwdrivers and pry tools, which may easily be used as weapons. As the court explained in *People v. Myles* (1975) 50 Cal.App.3d 423, 430, 'Suspecting that appellant might possibly be a burglar, [the police officer] acted reasonably and properly in conducting a pat-down search for his own protection. It is reasonable for an officer to believe that a burglar may be armed with weapons, or tools such as knives and screwdrivers which could be used as weapons, and that a pat-down search is necessary for the officer's safety. [Citation.]' . . . [¶] A similar analysis holds true for automobile burglary . . . suspects, as they use tools that can be readily used as weapons." (*People v. Osborn* (2009) 175 Cal.App.4th 1052, 1060-1061.) The officers' emphasis in describing defendant's clothing as "puffy" obviously suggests its capacity for concealment.

Defendant was certainly uncooperative, even before Officer Trojanowki attempted to handcuff him.

Thus, the officers were confronted with a suspect whom they believed had automobile burglary on his mind they he saw them. He then fled until he was cornered, having failed to entry to a place where he had no right to be. There was no doubt that defendant was the person observed at the mall. He was thereafter distinctly uncooperative with the officers' obvious inquiries. The element of danger was not altogether absent. In light of the totality of these circumstances, we cannot conclude that the decision to handcuff defendant was either unreasonable or equivalent to an arrest.

DISPOSITION

The judgment of conviction is affirmed.

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Richman, J.

We concur:

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Kline, P.J.

_____
Lambden, J.

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